

Award No. 582

Docket No. 547

2-T&NO-CM-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**RAILWAY EMPLOYEES' DEPARTMENT, A. F. OF L.
(CARMEN)**

**TEXAS AND NEW ORLEANS RAILROAD COMPANY
(SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA)**

DISPUTE: CLAIM OF EMPLOYEES: That seniority date of L. D. O'Leary as carman helper should be as of June 26, 1939, according to Rule 28.

EMPLOYEES' STATEMENT OF FACTS: On March 6, 1939 carman helper L. D. O'Leary gave up his carman helper's position and returned as a helper apprentice, for the purpose to serve out his unfinished time as a helper apprentice. This was done on his own request. On June 26, 1939, he gave up his helper apprenticeship position and was re-employed as a carman helper, and was given a helper's seniority date as of February 18, 1935. This is a violation to seniority Rule 28 of the current wage agreement.

RULE 28—SENIORITY

Seniority of employes in each craft covered by this agreement shall be confined to the point employed in each of the following departments, except as provided in special rules of each craft:

Maintenance of way (bridge and building where separate from maintenance of way department).

Maintenance of equipment.

Maintenance of telegraph.

Maintenance of signals.

Four sub-divisions of the carmen as follows:

Pattern makers.

Upholsterers.

Painters.

Other carmen.

The seniority list will be open to inspection and copy furnished the committee.

There are separate seniority rosters of employes of each craft and are confined to the mechanical department at point employed, and separate seniority rosters maintained as follows: patternmakers, upholsterers, upholsterers' apprentice, painter, painter helper, painter apprentice and painter helper apprentice, carmen, carmen helper, carmen apprentice and carmen helper apprentice.

POSITION OF EMPLOYEES: We contend that L. D. O'Leary lost his seniority as carman helper on February 18, 1935, when he entered into service

agement does not feel that a successor committee has the right to protest the actions of the predecessor committee, and to seek to overthrow and void the agreements made with the predecessor committee. If recognition is extended to the complainant in this dispute, in that respect, the management would not know where it stands and the security of the employes would be affected, as nothing could ever be considered settled. It would provoke some reluctance to deal conclusively with the currently designated representative for fear such action would be attacked and disturbed in event of subsequent changes in representation.

The carrier has shown that the dispute presented to the Board by the complainant has once been disposed of with the authorized representatives of the employes, as required by the amended Railway Labor Act and there is no just reason or basis for the previous settlement to be disturbed.

It is affirmatively stated that all of the documentary evidence introduced herein has been presented to the general chairman.

As the carrier has not seen or been furnishd with a copy of the organization's ex parte submission, it is not in a position to anticipate the contentions that will be made or attempt to answer those contentions at this time. Every effort has been exerted to set forth all relevant argumentative facts, including documentary evidence in exhibit form, but as it is not known what the organization will present, the carrier desires an opportunity to make such additional answer thereto as may be deemed appropriate.

Wherefore, premises considered, the carrier respectfully requests that the case be dismissed and/or that the claim be in all things denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

L. D. O'Leary was first employed as a carman apprentice. He was laid off in reduction of force, and later given employment as laborer; then carman helper.

On February 17, 1939, he was restored to position of carman apprentice. He later gave up his position as carman apprentice and returned to position of helper (not in reduction of force); therefore, O'Leary's seniority as a carman helper should be as of June 26, 1939, the date he transferred from carman apprentice to carman helper.

AWARD

Claim of employes sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 12th day of March, 1941.